IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

R.S.A. No. 2937 of 2006
Date of Decision: 12.9.2006

Ravinder Garg and others

...Appellants.

Versus

Deepak Makhija and others

...Respondents.

CORAM:- HON'BLE MR. JUSTICE AJAY KUMAR MITTAL.

PRESENT: Mr. Akshay Bhan, Advocate for the appellants.

Mr. R.S.Hooda, Advocate for respondent No.8.

AJAY KUMAR MITTAL, J.

This regular second appeal filed by defendants No.4 to 7 arises from a suit for mandatory injunction directing defendant No.1 (respondent No.7-Municipal Council, Panipat) to restore roads/street berms and parks to its original place according to Unbuilt Area Scheme No.8 situated over the land comprised in Khasra Nos. 1289 and 1289/1, Taraf Insar, Panipat after getting the unauthorized and illegal encroachments removed which are made by defendants No.2 to 8 or in the alternative to restore the possession of the same to the plaintiffs.

Brief facts of the case as narrated in the plaint are that the plaintiffs were owners of 4 bighas 6 biswas of land comprised in khasra Nos. 1289 and 1289/1 situated within the revenue estate of Taraf Insar, Panipat. An Unbuilt Area Scheme No.8 was formulated by defendant No.1 vide drawing No. ATP (A)-911/61 and the same was duly approved by the then Government of Punjab as per law. It was pleaded that an area measuring

2264 square yards was left open for roads, road berms and parks and the remaining area was sold by the plaintiffs to the different persons. It was pleaded that defendants No.2 to 8 purchased the land under Scheme No.8 and built their houses. Defendant No.1 by hatching a conspiracy to grab the land left, applied for transfer of the same and the Deputy Commissioner, Panipat vide order dated 8.9.1990 allowed defendant No.1 to transfer the open land left for roads, road berms and parks in favour of defendants No.2 to 8 and the said order was challenged by certain co-owners having land out of unbuilt area by way of an appeal and the same was accepted on 15.6.1991 by setting aside the order dated 8.9.1990 passed by the Deputy Commissioner, Panipat. It was directed that the unbuilt area in Scheme No.8 be restored to the public by removing all encroachments and defendants No.2 to 8 were directed to close the gate/openings of their private buildings in the park/streets.

Upon notice, defendant No.1 filed written statement by raising various preliminary objections. It was pleaded that the suit land was lying abandoned and undeveloped since long and the same was never used by the public and was adjacent to the houses of defendants No.2 to 8, it was decided to sell the same to the said defendants.

Defendants No.2 to 7 filed separate written statement by raising various preliminary objections. It was pleaded that the suit land was never used for the purpose for which it was earmarked and from the very beginning it was in their possession. It was further pleaded that the Municipal Council declared the said land as abandoned area and decided to transfer the same to the owners of the properties abutting said area. It was further pleaded that the order dated 15.6.1991 passed by the Commissioner and Secretary to Government of Haryana, Local Bodies Department, Chandigarh was illegal and not binding upon defendants No.2 to 7.

On the pleadings of the parties, the following issues were framed by the trial court:-

1. Whether the plaintiffs are owners of Khasra No. 1289 and 1289/1 as detailed in first para of plaint? OPP
2. Whether the sale deed executed by defendant No.1 in favour of defendants No.2 to 8 is illegal and void ab initio? OPP
3. Whether the plaintiff is entitled to the relief of mandatory injunction as claimed? OPP
4. Whether the plaintiff has no locus standi to file the present suit? OPD
5. Whether the plaintiff has no cause of action to file the present suit? OPD
6. Whether the suit is not maintainable in the present form? OPD
7. Whether the plaintiff is estopped by his own acts and conduct? OPD
8. Whether the suit is barred under the provision of Haryana Municipal Act as no necessary notice has been given to defendant No.1 before filing of the present suit? OPD
9. Relief.

The trial court took issues No.1 to 3 together being inter linked and interconnected and on appreciation of evidence came to the conclusion that the plaintiffs were owners of the land comprised in khasra Nos. 1289 and 1289/1. It was further held that no title can be drawn from the sale deed executed by defendant No.1 in pursuance of order dated 8.9.1990 passed by the Deputy Commissioner, Panipat qua the land provided in

Scheme No.8 and accordingly held the plaintiffs entitled for the grant of relief of mandatory injunction. In view of the above, the trial court decreed the suit filed by the plaintiffs vide judgment and decree dated 20.5.2003. On appeal, the learned lower appellate court affirmed the findings recorded by the trial court and dismissed the appeal vide judgment and decree dated 10.4.2006.

Learned counsel for the appellants made valiant efforts to persuade this Court to come to different conclusion but could not show any material on the basis of which it could be held that the concurrent findings recorded by the courts below suffer from any misreading or misappreciation of evidence which may warrant interference by this court in the regular second appeal. No question of law, much less a substantial question of law arises in this appeal.

In view of the above, finding no merit in this appeal, the same is hereby dismissed.

September 12, 2006 **(AJAY KUMAR MITTAL)**
gbs **JUDGE**